

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Petition for Declaratory Ruling to Clarify )  
Provisions of Section 332(c)(7)(B) to Ensure )  
Timely Siting Review and to Preempt under )  
Section 253 State and Local Ordinances that )  
Classify All Wireless Siting Proposals as )  
Requiring a Variance )  
\_\_\_\_\_ )

WT Docket No. 08-165

COMMENTS OF COUNCIL MEMBER TONY AVELLA, CHAIR OF ZONING AND  
FRANCHISES SUBCOMMITTEE, NEW YORK CITY COUNCIL

These Comments are filed by New York City Council Member Tony Avella to urge the Commission to deny the Petition filed by CTIA.

As noted below, CTIA's Petition is without merit and without basis in law or fact. I join in the Comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA") and the Coalition for Local Zoning Authority in response to CTIA's Petition.

In addition to the statutory legal arguments set forth in the Comments filed by NATOA and the Coalition for Local Zoning Authority which necessitate the Commission's denial of CTIA's Petition, it is also against public policy to grant the wireless industry the freedom to bypass State and local regulation which does not "prohibit or effectively prohibit the provision of telecommunications services" or "unreasonably discriminate among providers of functionally equivalent services" or have the "effect of prohibiting the provision of personal wireless services".

In 1996 the Congress rightfully addressed concerns over State and local regulation which would unfairly limit the public's access to telecommunications and personal wireless services as set forth in 47 U.S.C. §§ 332(c)(7) and 253. However, Congress also recognized the right of State and local governments to maintain zoning controls within their own communities and stated such in the Congressional Conference Report<sup>1</sup>.

<sup>1</sup> "The conference agreement creates a new section 704 which prevents Commission preemption of local and State land use decisions and *preserves the authority of State and local governments over zoning and*

This balance of interests is crucial and must not be destroyed in an alleged attempt to increase competition.

The broadcast and cell phone industries began their attempt to remove all local zoning authority for tower and antenna sites more than 10 years ago and the Commission refused those requests – as it should do again by denying the CTIA Petition which may appear to request a mere declaratory “clarification”, but would instead be a fatal blow to any State or local zoning control over tower and antenna siting.

Respectfully submitted,



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